

A REGULAR MEETING OF THE FAUQUIER COUNTY BOARD OF SUPERVISORS WAS HELD JANUARY 7, 1997 AT 9:30 A.M. IN WARRENTON, VIRGINIA

P R E S E N T Mr. David C. Mangum, Chairman; Mr. James G. Brumfield, Vice Chairman; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.; Mr. Larry L. Weeks; Mr. G. Robert Lee, County Administrator; Mr. Paul S. McCulla, County Attorney

Mr. Lee served as Chairman Pro Tem pending election of the Chairman.

ELECTION OF THE CHAIRMAN

Mr. Brumfield nominated Mr. Mangum as Chairman for 1997. With no further nominations, Mr. Mangum was elected Chairman for 1997 by acclamation.

ELECTION OF THE VICE CHAIRMAN

Mr. Burton nominated Mr. Brumfield as Vice Chairman for 1997. With no further nominations, Mr. Brumfield was elected Vice Chairman for 1997 by acclamation.

BOARD OF SUPERVISORS BYLAWS AND RULES OF PROCEDURE

Mr. Weeks moved to adopt the following Board of Supervisors Bylaws and Rules of Procedure for 1997. Mr. Brumfield seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. David C. Mangum; Mr. James G. Brumfield; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

1997

BYLAWS AND RULES OF PROCEDURE

FAUQUIER COUNTY BOARD OF SUPERVISORS

SECTION 1 -- PURPOSE AND BASIC PRINCIPLES

Section 1-1 Purpose of Bylaws and Rules of Procedure

A. To enable County government to transact business expeditiously and efficiently;

B. To protect the rights of each individual;

C. To preserve a spirit of cooperation among Board members; and

D. To determine the pleasure of the Board on any matter.

Section 1-2 Five Basic Principles Underlying Bylaws and Rules of Procedure

- A. Only one subject may claim the attention of the Board at one time;
- B. Each item presented for consideration is entitled to full and free discussion;
- C. Every member has rights equal to every other member;
- D. The will of the majority must be carried out, and the rights of the minority must be preserved; and
- E. The personality and desires of each member should be merged into the larger unit -- the Fauquier County Board of Supervisors.

SECTION 2 -- MEETINGS

Section 2-1 Regular Meetings

A. The time and place of regular meetings of the Board of Supervisors (hereinafter referred to as the Board) shall be established at the Board's annual organizational meeting. Regular meetings shall be held in the Board Meeting Room, Warren Green Building, 10 Hotel Street, Warrenton, Virginia on the first and third Tuesday of each month. The first regular monthly meeting agenda shall be devoted primarily to action/decision items and will begin at 9:30 a.m. The second regular monthly meeting agenda shall be devoted primarily to work sessions, public hearings, and policy formation discussions with work sessions and the regular session beginning at 6:30 p.m. The Board may, however, prescribe any other meeting place or time in compliance with Section 15.1-536 of the Code of Virginia (1950), as amended.

B. When a regularly scheduled meeting falls on a legal holiday, the meeting shall be held on the following business day.

Section 2-2 Special Meetings

A. The Board may hold such special meetings, as it deems necessary, at such times and places as it may find convenient; and it may adjourn from time to time. Any two (2) members may call a special meeting of the Board in such a manner as prescribed by Section 15.1-538 of the Code of Virginia (1950), as amended. Only matters specified in the notice shall be considered unless all of the members of the Board are present. Where a special meeting has been called the Board shall give to the media and general public such notice of the time, place and purpose of the meeting as is feasible.

Section 2-3 Annual Organizational Meetings

A. The first meeting held after the newly elected members of the governing body shall have qualified and the first meeting held in the corresponding month of each succeeding year shall be known as the annual meeting. The County Administrator shall preside during the election of the Chairman of the Board.

B. The Chairman shall be elected at the annual meeting for a term of one year. The Chairman may succeed himself/herself in office.

C. Following the election of the Chairman, he/she will assume the chair and conduct the election of the Vice Chairman.

D. Following the election of the Vice Chairman, the Board shall:

1. Establish dates, times and places for the regular meetings;
2. Adopt its Bylaws and Rules of Procedure;
3. The Chairman shall make Board appointments to standing and ad hoc Board committees as required.

Section 2-4 Quorum and Method of Voting

A. At any meeting, a majority of the Supervisors shall constitute a quorum. All questions submitted to the Board for decision shall be determined by a roll call vote. The Chairman may choose to have the vote by voice vote or by show of hands; however, if there is one "no" vote or one abstention the Board shall be polled and the name of each member voting and how he or she voted shall be recorded. Any member voting no or abstaining shall have the responsibility for asking for a roll call vote.

B. Members abstaining shall state for the record their reason for abstaining.

C. A tie vote fails, except as provided in Section 15.1-540 of the Code of Virginia (1950), as amended.

Section 2-5 Board to Sit In Open Session

A. The Board shall sit in open session and all persons conducting themselves in an orderly manner may attend the meetings; provided, however, the Board may conduct Executive Sessions as permitted under the Virginia Freedom of Information Act.

Section 2-6 Executive Sessions

A. Executive sessions may only be convened in conformance with Section 2.1-344 of the Code of Virginia (1950), as amended.

B. No resolution, ordinance, rule, contract, regulation or motion agreed to in an Executive Session shall become effective until the Board reconvenes in an open session and takes a vote of the membership on such resolution, ordinance, rule, contract or regulation or motion which shall have its substance reasonably identified in the open meeting.

C. At the conclusion of an Executive Session, the Board shall reconvene in open session immediately thereafter and shall take a roll call vote certifying that to the best of each members' knowledge:

1. Only public business matters lawfully exempted from open session requirements were discussed; and

2. Only public business matters identified in the motion convening the Executive Session were heard, discussed or considered.

Any member who believes that there was a departure from the above requirements shall so state prior to the vote, indicating the substance of the departure that, in his/her judgment, has taken place.

D. The failure of the certification to receive the affirmative vote of a majority of the members present during the Executive Session shall not affect the validity or confidentiality of the Executive Session with respect to matters considered therein in compliance with the Freedom of Information Act.

E. The Board may permit non-members to attend an Executive

Session if their presence will reasonably aid the Board in its consideration of an issue.

SECTION 3 -- OFFICERS

Section 3-1 Chairman and Vice Chairman

A. The Chairman shall preside over all meetings of the Board of Supervisors. The Chairman shall appoint Board members to serve on standing committees and ad hoc committees established by the Board of Supervisors.

Section 3-2 Clerk

A. The Clerk of the Board shall be the County Administrator. The County Administrator may appoint one or more members of the County staff to serve as Deputy Clerk of the Board.

Section 3-3 Parliamentarian

A. The County Attorney shall serve as the Parliamentarian for the purpose of interpreting these Bylaws and Rules of Procedure and Robert's Rules of Order as may be directed by the Chairman, or as required as a result of a point of order raised by any one or more Board members. If the County Attorney is unavailable, the County Administrator shall serve as the Parliamentarian.

Section 3-4 Preservation of Order

A. At meetings of the Board, the presiding officer shall preserve order and decorum.

SECTION 4 -- CONDUCT OF BUSINESS

Section 4-1 Order of Business

A. The Board shall adopt an agenda, including a consent agenda, for each meeting by recorded vote of a majority of the Board members present. The adoption of the agenda shall be the first item for action following the Call To Order and Pledge of Allegiance.

Section 4-2 Consent Agenda

A. The Chairman and County Administrator shall style routine, non-controversial matters requiring Board action on a Consent Agenda. Items may be removed from the Consent Agenda and placed on the Regular Agenda on recorded vote by a majority of the Board members present. Only one motion is necessary to adopt all recommendations and action items on the Consent Agenda.

Section 4-3 Citizens' Time

A. The Board shall set aside twenty (20) minutes for Citizens' Time on each regular Board Meeting Agenda. During this period the Board shall receive comment from any citizen on any non-agenda item or any agenda item not scheduled for public hearing by the Board provided that the Chairman prohibit or proscribe the use of obscenity or other speech tending to create a breach of the peace; and provided further that no individual citizen shall be permitted to address the Board for more than five (5) minutes. In the event that more than four (4) speakers wish to be heard during Citizens' Time, the Chairman shall allocate the aforesaid twenty (20) minutes among speakers in a equitable

manner.

Section 4-4 Supervisors' Time

A. On each regular Board Meeting Agenda there shall be a period designated as Supervisors' Time, during which each Board member shall be entitled to unrestricted use of five (5) minutes for such purposes as each member of the Board deems appropriate. Matters discussed during Supervisors' Time shall not constitute formal agenda items unless the adopted agenda is amended by majority vote of the members present and voting.

Section 4-5 Board of Supervisors Meeting Agenda Submissions

A. Board agenda requests shall comply with the "Administrative Guidelines for Board of Supervisors' Agenda Items". This agenda item submission protocol is promulgated by the County Administrator's Office subject to review by the Board.

Section 4-6 Motions

A. No motion shall be discussed prior to being duly seconded in accordance with these Bylaws.

B. All motions shall be duly seconded before being voted.

C. When a question is under discussion, no motion shall be received unless it is one to amend, to commit, to postpone, for the previous question, for a substitute motion, a motion to lay on the table, or a motion to adjourn.

D. A maker of a motion may not speak against his motion.

E. No member may speak more than twice to the same motion.

F. No member may speak a second time on a motion until every member desiring to speak has spoken.

G. A substitute motion shall be allowed to any motion properly on the floor; it shall have precedence over an existing motion and may be discussed prior to being voted on. If a vote on the substitute motion does not dispose of the former motion, the former motion must then be voted. Once a substitute motion is voted upon, a second substitute motion may be made. No more than two (2) substitute motions may be made.

H. When a vote upon any motion has been announced, it may be reconsidered on the motion of any member who voted with the prevailing side provided that such motion shall be made at the session of the Board at which it was decided or the immediate subsequent regular meeting. Such motion for reconsideration shall be decided by a majority of the votes of the members present.

I. In accordance with the Constitution of the Commonwealth of Virginia, a recorded affirmative vote of a majority of the entire Board shall be required to pass any ordinance or resolution imposing taxes, authorizing the borrowing of money, or appropriating funds in excess of \$500.00.

Section 4-7 Decisions on Points of Order

A. The Chairman, when presiding at a meeting of the Board, without vacating the chair, shall refer any point of order to the Parliamentarian.

Section 4-8 Same; Appeal to Board

A. Any member of the Board may appeal to the Board from the decision of the Chairman on any question of order or the interpretation of these Bylaws. A majority vote of those present is necessary to overrule the Chairman. No second is required on a member's appeal.

Section 4-9 Motion to Adjourn

A. At a meeting of the Board, a motion to adjourn shall always be in order.

Section 4-10 Suspending Rules

A. One or more of these Bylaws and Rules of Procedure may be suspended with the concurrence of two-thirds of the members present.

Section 4-11 Amendment of Rules

A. These Rules of Procedure may be amended by majority vote of the entire membership, provided that a proposed amendment may not be voted on unless a text thereof shall have been presented to the Board at a previous meeting at which the date for a vote on the proposal had been established. Such notice shall not be required for any amendment adopted at the annual meeting. Any proposed amendment shall be subject to further amendment at the meeting at which the vote is taken.

Section 4-12 Robert's Rules of Order

A. The proceedings of the Board, except as otherwise provided in the Bylaws and Rules of Procedure and by applicable State law, shall be governed by Robert's Rules of Order, provided, however, that the rules governing small assemblies contained in Robert's Rules of Order shall not apply.

SECTION 5 -- AGENDA

Section 5-1 Preparation

A. The Clerk shall prepare an agenda for the regularly scheduled meetings conforming to the order of business specified in Section 4-1 titled "Order of Business".

B. Board members may request that items be placed on the agenda by contacting the County Administrator at least ten (10) business days prior to the Board meeting for which they wish the item scheduled. The County Administrator shall place requested items on the agenda for the next regular meeting following the request, subject to Paragraph A. of this section.

C. All items which are requested to be placed on the agenda which have not been submitted within the prescribed deadline shall be placed on the next regular agenda for consideration.

Section 5-2 Delivery of Agenda

A. The agenda and related materials for regular Board meetings shall be received by each member of the Board and the County Attorney at least forty-eight (48) hours prior to the meeting.

Section 5-3 Copies

A. The Clerk of the Board shall prepare or cause to be prepared extra copies of the agenda and shall make the same available to the public in the Office of the County Administrator. The Clerk shall also have copies available at each meeting. The Clerk shall post the agenda in such public places in the County as shall give the public as much notice of the agenda as is feasible.

Section 5-4 Comments, Queries of Board Members

A. Board members are to observe the following rules during the discussion of agenda items, public hearings excepted:

1. Comments of Board members must be constructive. The Chairman ensures that comments are constructive.

2. The Chairman keeps discussion germane to the subject. The Chairman rules other comments out of order.

SECTION 6 -- BOARD APPOINTMENTS

Section 6-1 Board of Supervisors Standing Committees

A. The Board, by majority vote, may establish standing committees of the Board (i.e. Personnel, Finance). Each standing committee, once established by the Board, shall consist of two members of the Board appointed by the Chairman at the annual organizational meeting or at the inception of the committee for new standing committees.

Section 6-2 Board of Supervisors Ad-Hoc Committees

A. The Board, by majority vote, may establish ad hoc committees. The Chairman shall appoint Board members to serve on ad hoc committees. Ad hoc committee assignments can be made at the annual organizational meeting or at the inception of the committee for new ad hoc committees.

Section 6-3 Citizen Appointments

A. All appointments of citizens, other than members of the Board of Supervisors, shall be made by a majority vote of Board members present.

B. Unless specified by law or otherwise, all appointments of citizens shall be made at the first January meeting after the election of the Board of Supervisors and shall be for a term of four years.

ADOPTION OF THE AGENDA

Mr. Burton moved to adopt the agenda. Mr. Weeks seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. David C. Mangum; Mr. James G. Brumfield; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

EMPLOYEE OF THE MONTH -- LISA JENKINS

Mr. Green moved to adopt the following resolution. Mr. Brumfield seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. David C. Mangum; Mr. James G. Brumfield; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

RESOLUTION

A RESOLUTION TO RECOGNIZE LISA G. JENKINS AS THE FAUQUIER COUNTY EMPLOYEE OF THE MONTH FOR JANUARY 1997

WHEREAS, the Fauquier County Board of Supervisors recognizes that the County's employees are its most valuable resource; and

WHEREAS, effective July 16, 1991, the Board of Supervisors approved the resolution to establish the Employee Awards Program; and

WHEREAS, the Board of Supervisors selects one employee from those nominated, based upon the merits of outstanding performance and productivity, positive job attitude and other noteworthy contributions to the County; and

WHEREAS, Lisa G. Jenkins, GIS Technician I in the Commissioner of the Revenue Office, was nominated for the Employee of the Month Award; and

WHEREAS, in addition to her usual responsibilities, Lisa G. Jenkins has worked faithfully for the past several years with the Johnson Grass Committee as a liaison between County property owners and the Committee; and

WHEREAS, Lisa G. Jenkins' exceptional contributions to the Johnson Grass Committee include educating and providing advice to property owners, in a fair and respectable manner, on the control of Johnson Grass; and

WHEREAS, Lisa G. Jenkins provides the Johnson Grass Committee with aerial maps and assists the Johnson Grass Committee with the necessary tools to respond to public inquiries; and

WHEREAS, Lisa G. Jenkins displays a positive attitude and professionalism while providing services to the citizens of Fauquier County and the Johnson Grass Committee; now, therefore, be it

RESOLVED, by the Fauquier County Board of Supervisors this 7th day of January 1997, That Lisa G. Jenkins be, and is hereby, recognized as the Fauquier County Employee of the Month for January 1997; and, be it

RESOLVED FURTHER, That the Fauquier County Board of Supervisors extends gratitude to Lisa G. Jenkins for her outstanding performance and dedicated service; and be it

RESOLVED FINALLY, That Lisa G. Jenkins is hereby entitled to all of the rights and privileges associated with this award.

Mr. Burton presented Ms. Jenkins with a copy of the resolution, a certificate, a paperweight and \$100.00.

CITIZENS TIME

Connie Carter requested the Board of Supervisors assistance in getting information regarding the use of funds belonging to the senior citizens at Shadow Lawn.

CONSENT AGENDA

Mr. Burton moved to adopt the following Consent Agenda items. Mr. Brumfield seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. David C. Mangum; Mr. James G. Brumfield; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

FY 1997 Supplemental Appropriations

RESOLUTION (FY97)

A RESOLUTION TO APPROPRIATE FUNDS

WHEREAS, the Board of Supervisors is charged by the Code of Virginia with the preparation of an annual budget for Fauquier County; and

WHEREAS, this annual budget is a plan of how funds received by the County will be used to meet the needs of the citizens of the County; and

WHEREAS, during the course of the fiscal year, certain events occur which necessitate changing the budget plan by increasing a department's total budget; and

WHEREAS, funds needed to increase a department's budget must come from an outside source such as State, Federal, grant or other local sources such as the County's Reserve for Contingency; and

WHEREAS, proper justification for funding adjustments has been presented as outlined below:

Sheriff's Department
\$34,377

Sheriff's Department
\$124

Sheriff's Department
\$116

Finance Department/Treasurer/Commissioner of the Revenue
\$177,429

Total
\$212,046

to the Board of Supervisors and is attached to this resolution; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 7th day of January 1997, That the sum of \$212,046 be appropriated and is hereby approved.

FY 1997 Budget Appropriations -- Botha Affordable Home Ownership Project

RESOLUTION

BE IT RESOLVED by the Fauquier County Board of Supervisors this 7th day of January 1997, That \$15,000 from the Department of Housing and Community Development grant, \$5,000 from the Virginia Water Project, and \$10,000 from the Contingency Reserve be, and is hereby, appropriated to complete the planning portion of the Botha Affordable Home Ownership Project.

A Resolution to Authorize a Public Hearing to Amend Chapter 8 of the Fauquier County Code, Finance and Taxation

RESOLUTION

A RESOLUTION TO AUTHORIZE A PUBLIC HEARING TO AMEND CHAPTER 8, FINANCE AND TAXATION, OF THE FAUQUIER COUNTY CODE

WHEREAS, Section 58.1-3506, Subsection B., of the Code of Virginia, as amended, entitles the Board of Supervisors to levy a tax on the property enumerated in Subsection A. at a different rate from tax levied on other tangible personal property; and

WHEREAS, motor vehicles owned or leased by members of a volunteer rescue squads or volunteer fire companies are enumerated in subsection A. of Section 58.1-3506 of the Code of Virginia, as amended; and

WHEREAS, after review by the Public Safety Committee, the Board of Supervisors has determined it to be in the best interest of the citizens of Fauquier County to consider such an amendment enabling the setting of a different rate; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 7th day of January 1997, That the proposed amendment to the Fauquier County Code be advertised by the County Administrator for a public hearing on January 21, 1997.

Initiation of a Zoning Ordinance Text Amendment to Establish a Planned Commercial Industrial Development (PCID) District

RESOLUTION

A RESOLUTION TO INITIATE A ZONING ORDINANCE TEXT AMENDMENT TO ESTABLISH A PLANNED COMMERCIAL INDUSTRIAL DEVELOPMENT DISTRICT

RESOLVED by the Fauquier County Board of Supervisors this 7th day of January 1997, That in accordance with Section 13-200 of the Fauquier County Zoning Ordinance an amendment to Article 4 to establish a new Section 4-600 a Planned Commercial Industrial Development (PCID) District be, and is hereby,

initiated; and, be it

RESOLVED FURTHER, That the Planning Commission be, and is hereby, requested to hold a public hearing of the proposed amendment and make its recommendation to the Board.

A RESOLUTION OF SUPPORT FOR THE APPLICATION BY THE METRO RICHMOND CONVENTION AND VISITORS BUREAU TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION FOR FUNDING UNDER THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT (ISTEA) FOR THE INCLUSION OF THREE ADDITIONAL FAUQUIER COUNTY SITES INTO THE VIRGINIA CIVIL WAR TRAIL PROJECT

A public hearing was held to consider support of an application by the Metro Richmond Convention and Visitors Bureau to VDOT for funding under the ISTEA grant for the Village of Paris, the Village of Atoka and the Goose Creek Bridge to be included as additional Fauquier County sites in the Virginia Civil War Trail Project. Sally Murray, John Gott, and David Boring requested the Board consider amending its support to include The Plains instead of the Village of Paris, the Village of Atoka and the Goose Creek Bridge. Kitty Smith, representing the Mosby Heritage Group, spoke in favor of including The Plains. The public hearing was closed. Mr. Weeks moved to adopt the following resolution. Mr. Green seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. David C. Mangum; Mr. James G. Brumfield; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

RESOLUTION

A RESOLUTION OF SUPPORT FOR THE APPLICATION BY THE METRO RICHMOND CONVENTION AND VISITORS BUREAU TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION FOR FUNDING UNDER THE INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT FOR THE INCLUSION OF ONE ADDITIONAL FAUQUIER COUNTY SITE INTO THE "VIRGINIA CIVIL WAR TRAIL" PROJECT

WHEREAS, Fauquier County, Virginia, desires to expand its participation in the multi-jurisdictional transportation enhancement project organized by the Metro Richmond Convention and Visitors Bureau through the Intermodal Transportation Efficiency Act; and

WHEREAS, the Commonwealth Transportation Board construction allocation procedures require that a request by resolution be received from the local government so that the Virginia Department of Transportation can program enhancement projects; and

WHEREAS, the Fauquier County Chamber of Commerce, working with local historians, has identified The Plains as a site to be considered for addition to the "Virginia Civil War Trail" Project, as well as the Goose Creek Bridge, if not accepted under Loudoun County's application; and

WHEREAS, the Fauquier County Board of Supervisors held a public

hearing on January 7, 1997 to receive comments concerning the proposed project; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 7th day of January 1997, That the County requests the Commonwealth Transportation Board consider the inclusion of The Plains as an additional site for the "Virginia Civil War Trail," a civil war sites driving tour marketing program, brochure and signage system; and, be it

RESOLVED FURTHER, That the Board of Supervisors also requests the Commonwealth Transportation Board consider the include of the Goose Creek Bridge if not accepted under Loudoun County's application; and, be it

RESOLVED FURTHER, That Fauquier County hereby agrees to pay 20% of the cost to implement this project for the additional site requested within Fauquier County, such County contribution to equal \$2,000, and that if Fauquier County subsequently elects to withdraw from this project prior to its completion, the County agrees to reimburse the Virginia Department of Transportation for the total amount expended by the Department on the sites in the County through the date the Department is notified of such withdrawal; and ,be it

RESOLVED FINALLY, That the Fauquier County Board of Supervisors understands that it has control over which Fauquier County sites are included in this project and input into content of the signs and brochures describing the sites and nearby attractions.

FAUQUIER COUNTY CODE AMENDMENT -- CHAPTER 9 -- OPEN BURNING ORDINANCE

A public hearing was held at the December 3, 1996 meeting to consider amending Chapter 9 of the Fauquier County Code to include an Open Burning Ordinance. Mr. Brumfield moved to table the decision and return the proposed ordinance to the Public Safety Committee for review and comments. Mr. Weeks seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. David C. Mangum; Mr. James G. Brumfield; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.; Mr. Larry L. Weeks
Nays: None
Absent During Vote: None
Abstention: None

FAUQUIER COUNTY CODE AMENDMENT -- AMEND AND RECODIFY CHAPTER 12 -- BUSINESS PROFESSIONAL AND OCCUPATIONAL LICENSE (BPOL)

A public hearing was held at the December 17, 1996 meeting to consider amending and recodifying Chapter 12 of the Fauquier County Code to include Business Professional and Occupational License (BPOL). Mr. Burton moved to adopt the following ordinance. Mr. Mangum seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. David C. Mangum; Mr. James G. Brumfield; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.; Mr. Larry L. Weeks
Nays: None
Absent During Vote: None
Abstention: None

ARTICLE I

- 12.1-1 Overriding Conflicting Ordinance
- 12.1-2 Definitions
- 12.1-3 Requirements for Bondsmen
- 12.1-4 Requirements for Coin Operated Machines
- 12.1-5 Requirements for Coin, Precious Metal and Gem Dealers
- 12.1-6 Requirements for Research and Development of Businesses
- 12.1-7 License Requirements
- 12.1-8 Situs for Gross Receipts
- 12.1-9 Limitations and Extensions
- 12.1-10 Appeals and Rulings
- 12.1-11 Recordkeeping and Audits
- 12.1-12 Exclusions and Deductions from "Gross Receipts"
- 12.1-13 License Fees and Tax

Article II

- 12.1-14 Beer and Wine Sales

Article III

- 12.1-15 General penalty; continuing violations; Repeal provisions

CHAPTER 12.1

Article I

LICENSES

12.1-1 Overriding Conflicting Ordinances

a. Except as may be otherwise provided by the laws of the Commonwealth of Virginia, and notwithstanding any other current ordinances or resolutions enacted by this governing body, whether or not compiled in the Code of Fauquier County, to the extent of any conflict, the following provisions shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within Fauquier County.

b. Pursuant to the provisions of 1-13.39:2, VA Code Ann., it is the intent of the Board of Supervisors that all future amendments to the sections of the Code of Virginia, 1950, as amended incorporated by reference in the provisions of this article be included in this article automatically upon their effective date, without formal amendment to this chapter by the board.

12.1-2 Definitions.

For the purposes of this article, unless otherwise required by the context:

"Affiliated group" means:

(a) One or more chains of includable corporations connected through stock ownership with a common parent corporation which is an includable corporation if:

(1) Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of each of the includable corporations, except the common parent corporation, is owned directly by one or more of the other includable corporations; and

(2) The common parent corporation directly owns stock possessing at least

eighty percent of the voting power of all classes of stock and at least eighty percent of each class of the nonvoting stock of at least one of the other includable corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includable corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

(b) Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:

(1) At least eighty percent of the total combined voting power of all classes of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation, and

(2) More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the includable corporations, including the common parent corporation is a non-stock corporation, the term "stock" as used in this subdivision shall refer to the non-stock corporation membership or membership voting rights, as is appropriate to the context.

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the Commissioner of Revenue or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by an Commissioner of Revenue when a written notice of assessment is delivered to the taxpayer by the Commissioner of Revenue or an employee of the Commissioner of Revenue, or mailed to the taxpayer by the Treasurer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by this article for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

"Amusements" means every person conducting or engaging in any amusement occupation, business or trade, including but not limited to those listed in this section.

- Amusement parks
- Amusement rides
- Arcades or buildings dedicated to general amusement or entertaining
- Billiard or pool halls
- Bowling alleys
- Drive-in theaters
- Golf courses
- Gold driving ranges
- Marinas
- Miniature golf courses
- Movie theaters
- Parks or athletic fields
- Rifle ranges or shooting galleries
- Speedways
- Tennis courts
- Theaters

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of §58.1-3715 of the Code of Virginia, 1950, as amended or for a different period for measuring the gross receipts of a business, such as for beginning businesses filing estimated license applications pursuant to Section 12.1-7 of this Article.

"Bondsman" means Any person who shall, for compensation, enter into any bond or bonds for others, whether it be as principal or surety.

"Business" means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to the public as being engaged in a particular business; or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

"Builders and developers" means any person conducting or engaging in any business, occupation or trade in connection with the improvement or development and sale of any property or structure owned or leased by or otherwise in the control of such builder or developer. The term "builder" or "developer" shall not include any person defined as a "contractor" under this chapter or any person building a residence for his or her own personal use or the use of his or her immediate family.

"Coin operated machines" shall mean any machines or devices operated on the coin or token-in-the-slot principle

"Coin, precious metals and gem dealers" shall mean any person conducting or engaging in any business, occupation or trade of coin, precious metals or gems

"Consultants and specialized occupations" means other than Professionals and Professional Services as defined under this section, every person conducting or engaging in any consulting or specialized occupation or business are illustrated as, but are not limited to, persons who provide or operate:

- Accounting services: bookkeeping or tax preparation
- Actuary
- Analysts: business financial, marketing research or operations
- Appraisers
- Arborist
- Artist
- Blue printer
- Brokers: stock or investment
- Business operations management
- Chemists
- Commercial inventory, valuation service
- Commission merchant
- Consultant: business, engineering, financial, labor, tax or transportation
- Counselors: family or financial
- Designers: landscape, fashion or graphic
- Estimators, measurers or assayers
- Insurance claims adjusters
- Investment advisory services
- Labor arbitrators

Language translators or interpreters
Lecturers
Producers: motion picture, television or radio
Property management services
Public stenographers and recorders
Real estate settlement services
Sculptors
Title abstract companies
Writers or editors

"Contractor" shall have the meaning prescribed in §58.1-3714.B of the Code of Virginia, 1950, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

"Definite place of business" means an office or a location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis; and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

"Financial services" means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities and other investments and shall include the service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this article.

For the purposes of this definition:

"Broker" shall mean an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

"Commodity" shall mean staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures.

"Dealer" for purposes of this article shall mean any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

"Security" for purposes of this article shall have the same meaning as in the Securities Act (§13.1-501 et seq.) of the Code of Virginia, 1950, as amended, or in similar laws of the United States regulating the sale of securities.

Those engaged in rendering financial services include, but without limitation, the following:

Buying installment receivables
Chattel mortgage financing
Consumer financing
Credit card services
Credit Unions (Subject to §58.1-3730 of the Code of Virginia, 1950, as amended)
Factors
Financing accounts receivable
Industrial loan companies (Subject to §58.1-3730.1 of the Code of

Virginia, 1950, as amended)
Installment financing
Inventory financing
Loan or mortgage brokers
Loan or mortgage companies
Safety deposit box companies
Savings Institutions (Subject to §58.1-3730 of the Code of Virginia, 1950, as amended)
Security and commodity brokers and services
Stockbroker
Working capital financing

"Gross receipts" means the whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of Chapter 37 of Title 58.1 of the Code of Virginia, 1950, as amended.

"License year" means the calendar year for which a license is issued for the privilege of engaging in business.

"Peddlers"; "Itinerant Merchants" means any person who shall carry from place to place any goods, wares or merchandise and offers to sell or barter the same or actually sells or barter the same. This definition shall not apply to a peddler at wholesale, or those which sell or offer for sale in person or by their employees wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits, or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale.

"Peddlers at wholesale" means any person who or which offers to sell goods, wares or merchandise to licensed dealers other than at a definite place of business operated by the seller, and at the time of such sale or exposure for sale delivers or offers to deliver the goods, wares or merchandise to the buyer. For purposes of this section any delivery made on the day of sale shall be construed as a delivery at the time of sale.

"Person" means any individual, firm, partnership, corporation, company, association or joint stock association. Person includes any trustee, receiver, assignee or personal representative thereof carrying on or continuing a business, profession, trade, occupation or calling. Person does not include: (i) volunteer fire departments; (ii) volunteer rescue squads; (iii) nonprofit charitable, cultural, educational or recreational organizations which are created to operate a community center, a swimming pool, a tennis court or some other facility or service for the exclusive benefit of the residents of Fauquier County; or (iv) a court-appointed trustee, receiver or personal representative in the liquidation of assets for immediate distribution or sergeant or sheriff, or any deputy, selling under authority of process or writ of a court of justice.

"Personal services" shall mean rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this article, or rendered in any other business or occupation not specifically classified in this article unless exempted from local license tax by Title 58.1 of the Code of Virginia, 1950, as amended.

"Public service corporations" means every telephone or telegraph company, water company, or heat, light or power company.

"Professional services" means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or

alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Virginia Department of Taxation may list in the BPOL guidelines promulgated pursuant to §58.1-3701 of the Code of Virginia, 1950, as amended. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

"Purchases" shall mean all goods, wares and merchandise received for sale at each definite place of business of wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesaler or wholesale merchant and sold or offered for sale. Such merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine or chooses not to disclose the cost of manufacture.

"Real estate services" shall mean rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this article, and such services include, but are not limited to, the following:

- Appraisers of real estate
- Escrow agents, real estate
- Fiduciaries, real estate
- Lessors of real property
- Real estate agents, brokers and managers
- Real estate selling agents
- Rental agents for real estate

"Research and development business" means every person engaged in the business of research and development, designated as principal or prime contractor receiving identifiable federal appropriations. For the purpose of this article, identifiable federal appropriations shall mean federal funds received for research and development services as defined in the Federal Acquisition Regulations ("FAR") by 48 C.F.R. § 31.205-18 (a) for research and development in the areas of (i) computer and electronic systems; (ii) computer software; (iii) applied sciences; (iv) economic and social sciences; and (v) electronic and physical sciences.

"Retailer" or "Retail Merchant" shall mean any person or merchant who sells goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial and industrial users.

"Services" shall mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.

"Wholesaler" or "Wholesale Merchant" shall mean any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government and industrial users which because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale.

12.1-3. Requirements for Bondsmen

(a) No such professional bondsman or his agent shall enter into any such bond or bonds within the county until he shall have obtained such license.

With the exception of any bondsman or his agent who has heretofore

obtained a certificate and license under this section and whose certificate, license and right to act as a bondsman continues to remain in full force and effect, no such license shall be issued by the Commissioner of Revenue unless and until the applicant shall have first obtained a certificate from the judge of the circuit court that he is of good moral character and entitled to be so licensed.

(b) Exemptions. A revenue license granted to a professional bondsman in any other county or city within the commonwealth shall authorize such person to enter into such bond or bonds within the county.

Nothing in this section shall be construed to apply to guaranty, indemnity, fidelity and security companies doing business in the state under the provisions of title 38.1, chapter 14, of the Code of Virginia, 1950, as amended

(c) Penalty. In addition to any other general penalty provided by Section 1- 7, failure to comply with the requirements of this section shall be cause for the revocation of any license issued under the authority of this section after written notice to the bondsman and an opportunity to be heard.

12.1-4 Requirements for Coin Operated Machines

(a) Coverage. Every person selling, leasing, renting or otherwise furnishing or providing coin operated machines or devices operated on the coin or token-in- the-slot principle.

(b) Exemptions. The following persons shall not be assessed with the license tax imposed by subsection (a) of this section:

(1) Any person owning fewer than three (3) such coin operated machines and operating such machines on property owned or leased by such person;

(2) Any operator of weighing machines, automatic baggage or parcel checking machines or receptacles;

(3) Any operator of vending machines which are so constructed as to do nothing but vend goods, wares and merchandise or postage stamps, or provide service only;

(4) Any operator of viewing machines or photomat machines and any operator of devices or machines affording rides to children or for the delivery of newspapers; and

(5) Any person engaged in the business of selling goods, wares and merchandise in the county through the use of coin operated vending machines.

(c) Forfeiture of machines and devices. In addition to any other general penalty provided in Section 1-7 of the Fauquier County Code, whoever violates or fails to comply with this section shall suffer the forfeiture to the county of the machine or other device in question.

12.1-5 Requirements for Coin, Precious Metals and Gem Dealers

(a) Coverage. Each person conducting or engaging in any business, occupation or trade of coin, precious metals or gem dealers.

(b) Record of purchases. Every dealer shall keep at his place of business an accurate and legible record of each purchase of precious metals or gems. The record of each such purchase shall be retained by the dealer for not less than twenty-four (24) months. These records shall set forth the following:

(1) A complete description of all precious metals or gems purchased from each seller, which description shall include all names, initials, serial numbers or other identifying marks or monograms on each item purchased, the true weight or carat of any gem, and the price paid for each item;

(2) The date and time of receiving the items purchased; and

(3) The name, address, age, sex, race, driver's license or social security number and one (1) other identification number, vehicle license number, and the signature of the seller.

The information required by this section shall appear on each bill of sale for all precious metals and gems purchased by a dealer, and a copy shall be delivered within twenty-four (24) hours of the time of purchase to the sheriff of the county.

Every dealer shall admit to his premises during regular business hours the sheriff or his sworn designee, of the county, or any law enforcement official of the state or federal government, and shall permit such law enforcement officer to examine all records required by this section, and to examine any article listed in a record which is believed by the officer or official to be missing or stolen.

(c) Identification of seller. No dealer shall purchase precious metals or gems without first ascertaining the identity of the seller by requiring an identification issued by a governmental agency with a photograph of the seller thereon, and at least one (1) other corroborating means of identification.

(d) Prohibited purchases. No dealer shall purchase precious metals or gems from any seller who is under the age of eighteen (18) years old.

No dealer shall purchase metals or gems from any seller who the dealer believes or has reason to believe is not the owner of such items, unless the seller has a written statement directing such sale.

(e) Dealer to retain purchases. The dealer shall retain all precious metals or gems purchased for a minimum of fifteen (15) calendar days from the date on which a copy of the bill of sale is received by the sheriff of the county. Until the expiration of this period, the dealer shall not sell, alter, or dispose of a purchased item, in whole or in part, or remove it from the county.

If a dealer performs the service of removing precious metals or gems, he shall retain the metals or gems removed and the article from which the removal was made for a period of fifteen (15) calendar days after receiving such article and precious metals or gems.

(f) Record of sales. Each dealer shall keep and maintain for at least twenty-four (24) months an accurate and legible record of the name and address of the person, firm, corporation or partnership to which he sells any precious metal or gem in its original form after the waiting period required by subsection (e) of this section. This record shall also show the name and address of the seller from whom the dealer purchased such item.

(g) Bond or letter of credit required. Every dealer shall secure a license as required by this section; and each dealer at the time of obtaining such permit shall enter into a recognizance to the board of supervisors of the county secured by a corporate surety authorized to do business in the commonwealth in the penal sum of ten thousand dollars (\$10,000.00) conditioned upon due observance of the terms of this section. In lieu of a bond, a dealer may cause to

be issued by a bank authorized to do business in the commonwealth a letter of credit in favor of the board of supervisors of the county in the sum of ten thousand dollars (\$10,000.00).

A single bond upon an employer or principal may be written or a single letter of credit issued to cover all employees and all transactions occurring at a single location.

(h) Private action on bond or letter of credit. If any person shall be aggrieved by the misconduct of any dealer who has violated the provisions of this section, he may maintain an action for recovery in any court of proper jurisdiction against such dealer and his surety, provided that recovery against the surety shall be only for the amount of the judgment, if any, which is unsatisfied by the dealer.

(i) Method of obtaining license. No person shall engage in the activities of a dealer as defined in this section without first obtaining a license from the commissioner of the revenue of the county.

To obtain a license, the dealer shall file with the commissioner of revenue of the county an application form which shall include the dealer's full name, any aliases, address, age, sex and fingerprints; the name, address and telephone number of the applicant's employer, if any; and the location of the dealer's place of business. Upon filing this application the dealer shall be issued a license by the commissioner of revenue provided that the applicant has not been convicted of a felony or crime of moral turpitude within seven (7) years prior to the date of application. The license shall be denied if the applicant has been denied a license or has had a license revoked under any article similar in substance to the provisions of this section.

Before a license may be issued, the dealer must have all weighing devices used in his business inspected and approved by local or state weights and measures officials and present written evidence of such approval to the commissioner of revenue.

If the business of the dealer is not operated without interruption, with Saturdays, Sundays and recognized holidays excepted the dealer shall notify the commissioner of revenue of all closings and reopening of such business. The business of a dealer shall be conducted only from the fixed and permanent location specified in his application for a permit.

(j) Exemptions. The commissioner of revenue may waive by written notice implementation of any one (1) or more of the provisions of this section, except subsection (d) for particular numismatic gems, or antique exhibitions or craft shows sponsored by nonprofit organizations, provided that the purpose of the exhibitions is nonprofit in nature, notwithstanding the fact that there may be casual purchases and trades made at such exhibitions.

(k) Penalties. Any person convicted of a first offense of violating any of the provisions of this section shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for a period of not more than six (6) months or by both such fine and imprisonment. Upon conviction of any subsequent offense, he shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period of not more than twelve (12) months or by both such fine and imprisonment.

Upon the first conviction by any court of a dealer for violation of any provision of this section, the commissioner of revenue may revoke his license to engage in business as a dealer under this article for a period of one (1) full year

from the date the conviction becomes final. Such revocation shall be mandatory upon a second conviction.

If a dealer performs the service of removing precious metals or gems, he shall retain the metals or gems removed and the article from which the removal was made for a period of fifteen (15) calendar days after receiving such articles and precious metals or gems.

12.1-6. Requirements for Research and Development Businesses

Every person receiving identifiable federal appropriations for research and development who qualify for license taxation under the definition in this article shall provide the required documentation to the Commissioner of the Revenue no later than March 1 each year confirming the applicability of the definition. Such documentation will be prescribed by the Commissioner of the Revenue and shall show that (i) the person is the principal or prime contractor, and (ii) that all gross receipts subject to taxation under the definition in this article are federal funds received in accordance with all terms and conditions prescribed by the provisions of this Section.

The provisions of the definition in this article shall not apply in cases where documentation required by this Section is not submitted in the time and manner prescribed by the provisions of this Section.

12.1-7. License Requirement.

(a) Every person engaging in Fauquier County in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this article, unless otherwise exempted by law, shall apply for a license for each such business if (i) such person maintains a definite place of business in Fauquier County; (ii) such person does not maintain a definite office anywhere but does maintain an abode in Fauquier County, which abode for the purposes of this article shall be deemed a definite place of business; or (iii) there is no definite place of business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in §58.1-3717, 3718, or 3728, respectively of the Code of Virginia, 1950, as amended, or is a contractor subject to §58.1-3715 of the Code of Virginia, 1950, as amended, or is a public service corporation subject to §58.1-3731 of the Code of Virginia, 1950, as amended.

(b) Each person subject to a license tax shall annually apply for a license on or before March 1. Each person beginning a business shall obtain a license prior to beginning the business, in Fauquier County. The application shall be on forms prescribed by the Commissioner of Revenue.

(c) A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (i) each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of the County; (ii) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and (iii) the taxpayer agrees to supply such information as the Commissioner of Revenue may require concerning the nature of the several businesses and their gross receipts.

(d) Beginning business. Every person beginning a business, profession, trade, occupation or calling which is subject to a license tax or fee under the provisions of this Article, shall estimate the amount of the gross

receipts or gross purchases that the person applying for a license expects to receive between the date of beginning business and the end of the then current license year, and the license tax or fee for the current year also shall be computed on such estimate. Whenever a license tax or fee is computed upon estimated gross receipts or gross purchases, such estimate shall be subject to adjustment by the Commissioner of Revenue at the end of the tax year to reflect actual gross receipts or gross purchases and the Commissioner of Revenue shall give credit for any overpayment on the license tax or fee payable the following year. Similarly, underestimates will be added to the license tax for the succeeding year. License tax shall be levied according to the license fee table set forth in this chapter or the tax rates established under the same section depending on the amount of gross receipts or purchases.

(e) Renewal of license. The license taxes and fees imposed by this Article shall be imposed annually on all phases of any business activity required to be licensed by this Article. Except as otherwise provided by this Article or by state law, the renewal of the annual license tax for each licensable business activity shall be determined in accordance with the license fee and or by multiplying annual gross receipts or gross purchases from the preceding calendar year, by the tax rate set forth in this Article, depending on the amount of gross receipts or purchases, whichever is appropriate for the type of business, profession, trade, occupation or calling to be licensed.

(f) The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of the business, the tax shall be paid on or before July 1 or thirty (30) days after beginning business.

(g) The Commissioner of Revenue may grant an extension of time, not to exceed ninety (90) days, in which to file an application for a license, for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, a penalty of ten percent of the portion paid after the due date.

(h) A penalty of ten percent of the tax shall be imposed upon the failure to pay the tax by the due date. In the case of an assessment of additional tax made by the Commissioner of Revenue, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the Commissioner of Revenue is not paid within thirty (30) days the Treasurer may impose a ten percent late payment penalty. The penalty shall not be imposed, or if imposed, shall be abated by the Treasurer, if the failure to pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

"Acted responsibly" means that: (i) the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; and (ii) the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

"Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence

(e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the Commissioner of Revenue, who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

(i) Interest shall be charged for failure to pay on time and shall accrue on the sum of the tax and penalty during the first year that tax is delinquent at a maximum rate allowed under §58.1-3916, Code of Virginia, 1950, as amended, and the maximum rate allowed under §6621, Internal Revenue Code, for the second and subsequent years in which interest is computed. Whenever an assessment of additional or omitted tax by the Commissioner of Revenue is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any tax paid under this article from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under §58.1-3916.

(j) No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, in event of such adjustment, provided the refund or the late payment is made not more than thirty (30) days from (i) the date of the payment that created the refund; or (ii) the due date of the tax, whichever is later.

(k) Any person liable for any taxes imposed by this chapter who fails to pay or remit the taxes required under this chapter on or before the due date, shall, in addition to all penalties and interest, pay a fee to cover the administrative costs associated with the collection of such taxes. A fee of twenty dollars (\$20.00) shall be imposed upon all taxpayers from whom taxes are collected subsequent to the filing of a warrant or other appropriate legal document, but prior to judgment. A fee of twenty-five dollars (\$25.00) shall be imposed upon all taxpayers from whom taxes are collected subsequent to judgment.

(l) With the exception of those persons issued licenses listed below, licenses may be transferred from one person to another. However, no such transfer is valid unless and until notice in writing is given to the Commissioner of the Revenue. Failure to notify the Commissioner of the transfer of the license within thirty (30) days of such transfer shall invalidate such license.

Licenses issued under this chapter which may not be transferred:

Builders and developers
Coin operated machines
Coin, precious metals and gem dealers
Money lenders
Professional
Consultants and specialized occupations

(m) Except as hereinafter provided, there shall be no refund of any license tax paid under this chapter, except in the case of error as validated by the Commissioner. In the event a person, firm or corporation ceases to engage in a business, trade, profession or calling within the county during a year for which a license tax based upon gross receipts has already been paid, the taxpayer shall be entitled, upon application to the Commissioner of Revenue, to a refund for that portion of the license tax already paid, prorated on a monthly

basis, so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised within the county. The Commissioner shall offset against such refund any amount of past due taxes owed by the same taxpayer. In no event shall the county refund any part of a flat fee or minimum flat tax.

12.1-8. Situs of Gross Receipts.

(a) General rule. Whenever the tax imposed by this article is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within Fauquier County. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

(1) The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of §58.1-3715 of the Code of Virginia, 1950, as amended.

(2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesale or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality.

(3) The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed.

(4) The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.

(b) Apportionment. If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule [and the affected jurisdictions are unable to reach an apportionment agreement], except as to circumstances set forth in §58.1-3709 of the Code of Virginia, 1950, as amended, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another

jurisdiction shall not be attributed to Fauquier County solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

(c) Agreements. The Commissioner of the Revenue may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than 100% of its gross receipts from all locations in the affected jurisdictions, the Commissioner of the Revenue shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved.

12.1-9 Limitations and extensions

(a) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this article, both the Commissioner of Revenue and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) Notwithstanding §58.1-3903 of the Code of Virginia, 1950, as amended, the Commissioner of Revenue shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding years.

(c) The period for collecting any local license tax shall not expire prior to the period specified in §58.1-3940 of the Code of Virginia, 1950, as amended, two years after the date of assessment if the period for assessment has been extended pursuant to this subdivision, two years after the final determination of an appeal for which collection has been stayed pursuant to the following 12.1-10(b) or 12.1-10(d) of this article, or two years after the final decision in a court application pursuant to §58.1-3984 of the Code of Virginia, 1950, as amended, or similar law for which collection has been stayed, whichever is later.

12.1-10 Appeals and Rulings

(a) Any person assessed with a licensing tax under this article as the result of an audit may apply within 90 days from the date of the assessment to the Commissioner of Revenue for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The Commissioner of the Revenue may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, further audit, or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. The Commissioner of the Revenue shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).

(b) Provided an application is made within 90 days of an assessment, collection activity shall be suspended until a final determination is issued by the Commissioner of the Revenue, unless the Commissioner of the Revenue determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of 12.1-7(f) of this article, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires (i) to depart quickly from the locality; (ii) to remove his property therefrom; (iii) to conceal himself or his property therein; or (iv) to do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

(c) Any person assessed with a license tax under this article as a result of an audit may apply within ninety (90) days of the determination by the Commissioner of Revenue on an application pursuant to 12.1-10(a) above to the Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within ninety (90) days of receipt of the taxpayer's application, unless the taxpayer and the Commissioner of Revenue are notified that a longer period will be required. The application shall be treated as an application pursuant to §58.1-1821 of the Code of Virginia, 1950, as amended, and the Tax Commissioner may issue an order correcting such assessment pursuant to §58.1-1822 of the Code of Virginia, 1950, as amended. Following such an order, either the taxpayer or the Commissioner of Revenue may apply to the appropriate circuit court pursuant to §58.1-3984 of the Code of Virginia, 1950, as amended. However, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

(d) On receipt of a notice of intent to file an appeal to the Tax Commissioner under 12.1-10 (c) above, the Commissioner of Revenue shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the Commissioner of the Revenue determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of 12.1-7(f), but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in 12.1-10(b) above.

(e) Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the Commissioner of the Revenue. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision; or (ii) the Commissioner of the Revenue notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

12.1-11 Recordkeeping and audits

Every person who is assessable with a license tax shall keep sufficient records to enable the Commissioner of the Revenue to verify the correctness of

the tax paid for the license years assessable and to enable the Commissioner of the Revenue to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the Commissioner of the Revenue in order to allow the Commissioner of the Revenue to establish whether a particular receipt is directly attributable to the taxable privilege exercised within Fauquier County. The Commissioner of the Revenue shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside Fauquier County, copies of the appropriate books and records shall be sent to the Commissioner of the Revenue's office upon demand.

12.1-12 Exclusions and deductions from "gross receipts."

(a) General Rule. Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

(b) The following items shall be excluded from gross receipts:

(1) Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, for any federal or state excise taxes on motor fuels.

(2) Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).

(3) Any amount representing returns and allowances granted by the business to its customer.

(4) Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.

(5) Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.

(6) Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale of goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.

(7) Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.

(8) Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in

securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

(9) Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to said entity by the original purchases who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.

(10) Those receipts excluded by Virginia law pursuant to Virginia Code §58.1-3703 (C).

(11) Revenues that are attributable to taxable business activity conducted in another jurisdiction within the Commonwealth of Virginia and the volume attributable to that business activity is deductible pursuant to Virginia Code §58.1-3708 and §58.1-3709.

(12) Those receipts which are subject to a license tax on the same business activity imposed by a town government in accordance with Virginia Code §58.1-3711.

(13) Licenses, admission taxes or pari-mutual wagering pools established under Virginia Code § 59.11-392 or 59.1-393 in accordance with the provisions of Virginia Code §58.1-3732.1.

(14) Any amounts received by a real estate broker which arise from real estate sales transactions to the extent that such amounts are paid to a real estate agent as a commission and the agent is subject to a business license tax on such gross receipts in accordance with the provisions of Virginia Code §58.1-3732.2. Real estate brokers must include all such receipts within their taxable gross as individual real estate agents are not licensed separately under Chapter 12.1.

(15) The value of any trade-in vehicle accepted in trade by a motor vehicle dealer who accepts a trade-in as part of a sale of a motor vehicle pursuant to Virginia Code §58.1-3734.1.

(16) All amounts received in the course of conducting the state lottery by a lottery sales agent licensed by the State Lottery Board, but gross receipts do include the compensation actually paid to a lottery sales agent in accordance with the provisions of Virginia Code §58.1-4011.

(17) Amounts paid by advertising agents and agencies for any customer for advertising space, radio time, television time, electrical transcription, pressing, art work, engraving, plate, mats, printing stock and postage.

(18) Income which is exempt from the federal income tax pursuant to §501 (c)(6) of the United States Internal Revenue Code, as amended. However, the United States Internal Revenue Code does not exempt unrelated business income received by those organizations which is taxable pursuant to §501(b) of the United States Internal Revenue Code, as amended.

(19) Receipts which are the proceeds of a loan transaction in which the licensee is the obligator, or the return of principal of a loan transaction in which the licensee is the creditor. Gross receipts also do not include the return of principal or basis upon the sale of a capital asset. Gross receipts, when used in connection with or in respect to financial transactions involving the sale of notes, stocks, bonds or other securities or the loan, collection or advance of money or the discounting of notes, bills or other evidence of debt, mean the gross interest, gross discount, gross commission or other gross receipts earned by means of, or resulting from, such financial transactions, but gross receipts do not include any amount received as payment of debt.

(20) The pass-through funds of any money lender duly organized, registered and doing business as a cooperative association under the Virginia Cooperative Association Act or any corresponding cooperative association act of any other state or the District of Columbia. However, all funds used for operating expenses, retained margins and reserves of any such cooperative association are gross receipts which are taxable in accordance with Section 12.1-13 of this Article. Any cooperative money lender whose gross receipts are subject to taxation in accordance with this subparagraph shall submit such documentary proof as required by the Commissioner of Revenue that the cooperative money lender is duly organized, registered and doing business as a cooperative association in the manner provided herein.

(21) Investment income not directly related to the privilege exercised by a business subject to licensure not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

(22) General and administrative intra-company receipts or intra-company reimbursements or transfer payments.

(23) Any receipts attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.

12.1-13. License Fees and Tax

(a) Every person or business subject to licensure under the article shall be assessed and required to pay annually a minimum fee of Twenty dollars

(b) However, for businesses whose gross receipts are \$100,000 or less a fee schedule for the issuance of such license shall be as enumerated:

Gross Receipts or Purchases
License Fee

1
\$0 - \$10,000
\$0

2
\$10,000.01 - \$50,000
\$20

3

\$50,000.01 - \$100,000

\$50

(c) In addition to the license fee specified in subsection (a) above, and except as may be otherwise provided in §58.1-3712, §58.1-3712.1 and §58.1-3713 of the Code of Virginia, 1950, as amended, every such person or business with annual gross receipts of more than \$100,000 shall be assessed and required to pay annually a license tax on all the gross receipts of such persons includable as provided in this article at a rate set forth below for the class of enterprise listed:

1. Amusements ten cents per \$100.00 gross receipts; annually.
2. Bondsmen, \$150.00 per license year.
3. Builders and Developers ten cents per \$100.00 gross receipts; annually
4. Carnivals and circuses, \$50.00 for each performance held in Fauquier County.
5. Coin operated machines, 3-10 machines \$150.00 per license year, 10 or more machines \$200.00 per license year.
6. Coin, precious metals, ten cents per \$100.00 on gross receipts; annually.
7. Consultant and specialized occupations, thirty cents per \$100.00 gross receipts; annually.
8. Contractors and persons constructing for their own account for sale, ten cents per \$100.00 of gross receipts; annually.
9. Direct sellers as defined in §58.1-3719.1 of the Code of Virginia, 1950, as amended with total annual sales in excess of \$4,000.00, ten cents per \$100.00 of total annual retail sales or five cents per \$100.00 of total annual wholesale sales, whichever is applicable.
10. Financial, real estate and professional services, thirty cents per \$100.00 of gross receipts; annually.
11. Fortune tellers, clairvoyants and practitioners of palmistry, \$500.00 per license year.
12. Itinerant merchants or peddlers, \$500.00 per license year.
13. Peddlers at wholesale, five cents per \$100.00 on gross purchases; annually.
14. Permanent coliseums, arenas or auditoriums having a maximum capacity in excess of 10,000 persons, open to the public, \$1,000.00 per license year; subject to limitations in Virginia Code §58.1-3729.
15. Photographers, \$30.00 per license year; subject to limitations in Virginia Code §58.1-3727.
16. Public Service Corporations, one half of one percent of the gross

receipts; except, however, in the case of the telephone companies, charges for long distance telephone calls shall not be included in gross receipts for the purpose of computation of such license tax. This license tax shall be in addition to any tax levied by the county under the authority of Chapter 26 of Title 58.1 (§58.1-2600 et seq.) of the Code of Virginia, 1950, as amended.

17. Repair, personal and business services and all other businesses and general occupations not specifically listed or exempted in this article or otherwise by law, twenty cents per \$100.00 of gross receipts; annually

18. Research and development business three cents per \$100.00; annually of such research and development gross receipts. Every person engaged in the business of research and development other than those defined in Section 12.1-2 ("Research and development business", thirty cents per \$100.00; annually of such research and development gross receipts.

19. Retailers, ten cents per \$100.00 of gross receipts; annually.

20. Savings institutions and credit unions, \$50.00 per license year; and industrial loan associations or any agricultural association, \$500.00 per license year.

21. Wholesalers, five cents per \$100.00 of purchases; annually.

ARTICLE II

SPECIAL LICENSE TAXES

12.1-14 Beer and wine sales

(a) Coverage. Every person engaging or conducting the business, trade or occupation of wholesaling or retailing beer and wine shall pay for the privilege a license tax as follows:

(1) Wholesale beer license. For each wholesale beer license; \$75.00 per license year.

(2) Wholesale wine distributor's license. For each wholesale wine distributor's license; \$50.00 per license year.

(3) Retail on-premises wine and beer license. For each retail on-premises wine and beer license for a hotel, restaurant or club; \$37.50 per license year.

(4) Retail off-premises wine and beer license. For each retail off-premises wine and beer license; \$37.50 per license year.

(5) Retail on-premises beer license. For each retail on-premises beer license for a hotel, restaurant or club; \$25.00 per license year.

(6) Retail off-premises beer license. For retail off-premises beer license; \$25.00 per license year.

(b) The licenses provided for in subsection (a) of this section shall be respectively defined by the act of the General Assembly of Virginia, as herebefore and hereafter amended, known as "The Alcoholic Beverage Control Act." and the words "beer" and "wine" whenever used in this section shall have the meanings respectively ascribed to them by such act.

(c) No license with reference to which the license tax is set out in this section shall be issued under this section to any person unless such person shall

hold or shall secure simultaneously therewith the proper state license required by the Alcoholic Beverage Control Act, which state license shall be exhibited to the Commissioner of Revenue. All dining rooms, restaurants, lunchroom and club rooms wherein beer and wine are sold for consumption on the premises shall at all times be open to inspection to the state police and the police authorities of the county. Any violation of the terms of this provision shall be sufficient grounds for the revocation of the license issued in accordance with this section.

ARTICLE III VIOLATIONS

12.1-15 General penalty; continuing violations; Repeal provisions

It shall be unlawful for any person to violate any of the provisions of this chapter. In addition to any specific penalties provided in this chapter any violation shall be punishable as provided under the provisions of section 1-7 of the county code. Each day any person shall continue to violate the provisions of this chapter shall constitute a separate offense.

That the provisions of Chapter 12.1, Articles I-III shall become effective January 1, 1997.

That the provisions of Chapter 12, Articles I-IV shall remain in force for all assessments made prior to January 1, 1997 and any omitted BPOL tax levies as may be made under such provisions.

That the provisions of Chapter 12, Articles I-IV shall expire on January 1, 2000 and be repealed at that time.

COMMITTEE ASSIGNMENTS

The Board of Supervisors agreed to defer action on committee assignments until the January 21, 1997 meeting.

APPOINTMENTS

The Board of Supervisors agreed to defer action on appointments until the January 21, 1997 meeting.

A RESOLUTION TO DIRECT THE SOLID WASTE MANAGER TO TREAT THE
CONSTRUCTION DEBRIS GENERATED FROM THE DEMOLITION OF A
PUBLIC NUISANCE LOCATED AT 160 HIGH STREET IN THE TOWN OF
WARRENTON AS MUNICIPAL SOLID WASTE AND CHARGE THE
ASSOCIATED TIPPING FEES TO THE GENERAL FUND CONVENIENCE SITE
BUDGET

Mr. Brumfield moved to adopt the following resolution. Mr. Burton seconded, and the vote for the motion was 4 to 1 as follows:

Ayes: Mr. David C. Mangum; Mr. James G. Brumfield; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.

Nays: Mr. Larry L. Weeks

Absent During Vote: None

Abstention: None

RESOLUTION

A RESOLUTION TO DIRECT THE SOLID WASTE MANAGER TO TREAT THE CONSTRUCTION DEBRIS GENERATED FROM THE DEMOLITION OF A PUBLIC NUSANCE LOCATED AT 160 HIGH STREET IN THE TOWN OF WARRENTON AS MUNICIPAL SOLID WASTE AND CHARGE THE ASSOCIATED TIPPING FEES TO THE GENERAL FUND CONVENIENCE SITE BUDGET

WHEREAS, Dana and Anna Bowman have recently purchased the 160 High Street property in Warrenton, Virginia, adjacent to their residence located at 168 High Street; and

WHEREAS, located on the 160 High Street property was a dilapidated residential structure that was considered a public nuisance and public safety hazard as it was the site of significant drug-related activity; and

WHEREAS, the Bowman's demolition contractor delivered 114.44 tons of construction debris to the Fauquier County landfill resulting in a tipping fee billing of \$5,264.24; and

WHEREAS, the Bowman's are requesting that the Fauquier County Board of Supervisors consider waiving the tipping fees in recognition of their removal of this public safety hazard; and

WHEREAS, the Board may not wave tipping fees at the landfill due to the Board's own enterprise fund policies, but may choose to treat the debris as municipal waste and charge the waste to the General Fund Convenience Site budget; now, therefore, be it

RESOLVED by the Fauquier County Board of Supervisors this 7th day of January 1997, That the Fauquier County does hereby direct the Solid Waste Manager to charge the 114.44 of construction debris resulting from the derelict structure located at 160 High Street to the Convenience Site Budget as municipal waste, and, be it

RESOLVED FURTHER, That the Board of Supervisors hereby directs the Budget Officer to transfer the amount of \$5,264.24 from the Non-Dedicated Reserve to the Convenience Site budget to cover the costs associated with this action.

EXECUTIVE SESSION

Mr. Mangum moved to go into executive session pursuant to Virginia Code Section 2.1-344(A) (7) for consultation with legal counsel pertaining to legal matters. Mr. Green seconded, and the vote for the motion was unanimous as follows:

Ayes: Mr. David C. Mangum; Mr. James G. Brumfield; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Abstention: None

Upon reconvening from executive session, Mr. Mangum moved to adopt the following certification. Mr. Green seconded.

CERTIFICATION OF EXECUTIVE MEETING

WHEREAS, the Fauquier County Board of Supervisors has convened an executive meeting on this date pursuant to an affirmative recorded vote and in accordance with the provision of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by this Board of Supervisors that such executive meeting was conducted in conformity with Virginia Law; now, therefore, be it

RESOLVED this 7th day of January 1997, That the Fauquier County Board of Supervisors certifies that, to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Fauquier County Board of Supervisors.

VOTE:

Ayes: Mr. David C. Mangum; Mr. James G. Brumfield; Mr. Wilbur W. Burton; Mr. James R. Green, Jr.; Mr. Larry L. Weeks

Nays: None

Absent During Vote: None

Absent During Meeting: None

APPEAL OF THE TOWN OF WARRENTON'S ARCHITECTURAL REVIEW
BOARD'S DECISION REGARDING THE DETENTION CENTER

The Board of Supervisors authorized Randy Wheeler to enter into negotiations in the appeal process with the Town of Warrenton reducing the size to 133 and request that the decision be tabled for three months.

The meeting was reconvened at 7:00 p.m. at Warrenton Middle School.

CITIZENS OPEN MICROPHONE

The Board of Supervisors held an open microphone session for the citizens of the County to speak on issues of concern. Approximately 125 people spoke on topics relating to the proposed detention center, the proposed sewer line from Vint Hill Farms Station to Southern Fauquier, Vint Hill redevelopment, the economic development office, Sheriff's Department Operations, and the Auburn Dam.

With no further business, the meeting was adjourned.

40

41